

**BATTLE CREEK CITY PLANNING COMMISSION
MEETING MINUTES**

Wednesday, April 22, 2009

1. Call to Order:

Mayor Behnke called the meeting to order at 3:58 p.m.

**MOTION MADE BY COMMISSIONER BARKER TO HAVE MAYOR BEHNKE
CHAIR TODAY'S PLANNING COMMISSION MEETING AS THE CHAIRPERSON
IS EXCUSED; SECOND BY COMMISSIONER SIMMONS. ALL IN FAVOR, NONE
OPPOSED MOTION CARRIED.**

2. Attendance:

Members Present:

Steve Barker	Preston Hicks	Chip Spranger
Mark Behnke	William Morris	John Stetler
Jan Frantz	Chris Simmons	

Staff Present: Susan Bedsole, Director, Licensing & Compliance
Glenn Perian, Senior Planner, Planning Dept.
Leona Parrish, Administrative Assistant, Planning Dept.

3. Additions or Deletions to the Agenda: None

4. Approval of Minutes: Meeting Minutes of March 25, 2009.

Commissioner Frantz noted a correction on page 1, bottom line; should read mitigation not litigation.

**A MOTION WAS MADE BY COMMISSIONER BARKER, SUPPORTED BY
COMMISSIONER SIMMONS TO APPROVE THE MINUTES OF MARCH 25, 2009
WITH CORRECTION NOTED FOR THE RECORD. VOTE ON MOTION: ALL YES,
NONE OPPOSED MOTION CARRIED.**

5. Correspondence: Hand-out presented to commission that consisted of seven correspondences received (2-in favor) and (5-opposed) regarding today's petition for Zoning Reclassification (#Z-01-09). He also wanted to note the additional correspondence that was included with the packets mailed for today's meeting.

6. Public Hearing: Zoning Reclassification (#Z-01-09): Petition from Anchor Properties, 44 Grandville Ave., S.W., Grand Rapids, MI 49503, requesting a Zoning Reclassification on behalf of Robert & Margery Zuhl, 150 Grand Blvd, Battle Creek, MI and (Ryan's) Fire Mountain Restaurants, LLC, 1460 Buffet Way, Eagan, MN 55121; requesting a Zoning Reclassification of the following described property from "O-1 Office District" to "C-2 General Business District" located on Grand Blvd., Parcel #7610-15-141-0, and N.E. portion of Parcel #7610-15-132-0, and legally described as: RURAL PARK E 148.5 FT OF N 73.59 FT OF LOT 19 and RURAL PARK LOTS 12 AND 18, LOT 19 EXCLUDING NORTH 1/2 OF EAST 1/2.

SPEAK IN FAVOR:

Mr. Matt Williams, Anchor Properties was present to speak; stated he is here today to request approval of small area of rezoning shown on map and would allow the relocation of the existing Felpausch Store. Noted the re-zoning is consistent with the City's Master Plan and the project would clean-up a key corner intersection which is very visible; it would consolidate several driveways and the plan would improve the area by eliminating the number of curb cuts. Said they met with and have the support of Neighborhood Planning Council #3; also the Columbia Avenue Business District group. Noted there were some concerns from NPC #3 and had been addressed at their meeting.

Mr. Williams noted the majority of the property is currently zoned C-2 which is an allowed zone for their use, except a small portion at the northwest corner on Grand Blvd. Said the Spartan Stores bought the Felpausch Stores and did not acquire their real-estate, which is still owned by the Felpausch family. Spartan now leases and decided to re-locate from their leased Felpausch Stores.

Mr. Randy Labrecque, Labrecque & Associates Real-estate, spoke on behalf of Mr. Pearce who is out of town; said this appears to be a positive thing that fits in with the Columbia Avenue Business Improvement Plan and seems to be a reasonable plan for the community. Said it will improve the overall look of that area as some of the buildings were older and need to be addressed and would be removed. Noted the Spartan Stores have a long history in Michigan which began in 1950's. Said it is a win-win situation for everyone and the issue today is to rezone on Grand Blvd. only; it is already in the city's zoning plans and that the store has a right to relocate there even if this rezone is not approved, they would just need to redesign their plans.

Ms. Gloria Russo, NPC #3 Chairperson, stated Anchor Properties had met with NPC #3 twice and their council had voted to support their request for a re-zone, with the concerns noted of the residents. They believe and expect they would be good stewards of the neighborhood; wanted to note to the residents they had asked detailed questions of their concerns on their behalf. Mrs. Russo asked the commission on behalf of the NPC to consider approving, as they would be a good addition to the neighborhood.

Mr. Al Morehart, Owner of Troxel Reality Co., (Ryan's Stakehouse Representative); stated this building has been vacant for many years with no offers to purchase received and is now beginning to deteriorate. Said as a business owner he believes the area does need to be cleaned-up and if approved it would create jobs and support the community.

Ms. Clara Scherer, 181 Grand Blvd. submitted a letter that is before the commission today. Said she was not familiar with what was noted in the NPC's list of concerns, but was at Dr. Leonard's office located on John R. Street and asked if approved; could they have speed bumps for traffic. She would also like a fence along Grand Blvd. to keep trash away that they get from Taco Bell and Long Johns from coming onto their property, also a traffic light for Grand Blvd. and John R. Street. Said if these things could be done she would not have a problem with this project.

Mr. George Bratcher, 3515 S. Minges, Chairman Columbia Avenue Business Improvement District, stated they submitted correspondence in support of this project. Said it is a minor zoning request from "O1 to C-2" which would provide them more flexibility in their site plan approval. They feel it would be good for the area.

SPEAK IN OPPOSITION:

Mr. John Reed, owner of Senior Oil, Inc., stated he attended the Neighborhood Planning Council meeting and noted there was no site plan provided. Said he owns a Gas & Convenience Store at 737 Capital Ave. S.W., which was built in 1998 and is adjacent to this property on John R. Street and Capital Ave. He was told by Mr. Mike Murray this newly proposed development would have a gas station that would butt-up to his station and asked to see a site plan. Stated he would be opposed to this development if they were to put a gas station back to back to his business.

Mr. Glenn Perian, Senior Planner stated a site plan is not required for this zoning request and the current zoning of C-2 for this property is a permitted use for their proposed development.

Ms. Carol Fix, 6 John R. Street, stated before she can support she has concerns she wanted the City to address: The noise ordinance in their area and noise control hours set for the store to be from 9:00 pm to 7:00 am for quite hours; the air and heating units on top of the buildings surrounded by noise barriers; trucks not be parked on the lot running idle and dumpsters not be place along their property lines; want controls be put in place for contaminated water run-off; and do not want gas stations etc. to be placed near their residential properties.

Ms. Jayna Mullett, 5 John R. Street, want speed bumps for traffic and a traffic light. Said they have a small (2 year old son) and also neighbor child (1 yr old); they want it to be safer as the traffic is currently bad and a store would increase this traffic. Said the trash coming onto their property is bad also. Noted they had been considering selling their property and with a store there it would be more difficult to sell. They are asking for consideration and want a noise barrier, fence, speed bumps or possibly close off the street at Grant Street.

Mr. Scott Jacob, 9 John R. Street, would like to see speed bumps also, said when the street was resurfaced a few years ago they asked the city for speed bumps at that time and did not get any feed back, would like it to be brought up again. Said after the city resurfaced their street, they now have water run-off and driveways are now deteriorating because of it and have not been addressed.

Mr. David Nielson, NPC #4 Chairperson, states he has a concern that this reclassification does provide an opportunity for growth; it also provides the potential for decay. Asked where in the process for rezoning does it consider the effect of the other properties. He asked what will happen to the current Felpausch Store building; and if it would be a benefit or a detriment.

With no one else wishing to speak the Public Hearing was closed.

7. Old Business: None

8. New Business:

A. Zoning Reclassification (#Z-01-09):

Petition from Anchor Properties, 44 Grandville Ave., S.W., Grand Rapids, MI 49503, requesting a Zoning Reclassification on behalf of Robert & Margery Zuhl, 150 Grand Blvd, Battle Creek, MI and (Ryan's) Fire Mountain Restaurants, LLC, 1460 Buffet Way, Eagan, MN 55121; requesting a Zoning Reclassification of the following described property from "O-1 Office District" to "C-2 General Business District" located on Grand Blvd., Parcel #7610-15-141-0, and N.E. portion of Parcel #7610-15-132-0.

Commissioner Simmons asked Mr. Williams, Anchor Properties, how they were going to address the list of concerns the Neighborhood Planning Council provided.

Mr. Matt Williams stated:

- 1.) **Fencing:** The City Ordinance requires a fence or plantings of more than 5 but less than 8 feet. They would agree to do both; the combination of the two would address the concerns; by keeping the mature trees that are currently there and add to them.
- 2.) **Traffic Patterns:** They obviously do not want people racing in front of the store and will eliminate those from their site as much as possible. They believe the relocation of this store would not cause additional traffic to what they currently have from the current store that is one block away. It would have frontage on Capital and Columbia and should not generate more traffic on John R. Street.
- 3.) **Truck Traffic & Outlets:** States the City Ordinance does not allow trucks on Grand Blvd. as it is not an allowed truck route, they would enter and exit on Capital Avenue and Columbia Ave.
- 4.) **Hours of Operation:** The current grocery store is open 6:00 am to 12:00 pm and Fuel Center from 6:00 am to 11:00 pm and would have the same business hours as the current Felpausch Store.
- 5.) **Light Abatement:** They would use the shoebox style of lighting which has a downward directional aim and would illuminate the same as if it were a full-moon and can be controlled.
- 6.) **Sound:** With the buffering of fence, bushes and hedges it would be reduced.
- 7.) **Placement of building:** One of reasons they are asking for the rezoning is to better position the building. If successful it would set 25 or 30 ft. from property line and the roof top units would be approximately 100 ft. from the property line. The current one at Ryan's is now 20-25 ft. from property line.
- 8.) **Curbing:** Storm-water is something that is very closely controlled by city staff and is competent that all the storm-water would be required and retained on site, so there would be no run-off.
- 9.) **Gas Station:** It would either be on Capital or Columbia which are currently zoned "C-2". They would prefer to have it on Columbia Ave. and not located next to a competitor.
- 10.) **Stability of Residential Area:** Zoning Map shows the surrounding residential used properties are all zoned "C-2 General Business"; according to the ordinance if someone wanted to put an Ice-cream Shop on John R. Street, they could do this tomorrow and would be allowed to remain open for all hours. They would not just meet the requirements of the ordinance, but would go beyond and provide separation from adjacent properties; they volunteer to provide fencing and ground level plantings on Grand Blvd. side for neighbors to help with separation from debris.
- 11.) **Garbage Smells:** They have the garbage access from inside the store only with no outside exposure.
- 12.) **Good Stewardship-Felpausch Store:** Cannot help but recognize being adjacent to residential uses even though they are zoned for a commercial use. They have tried to be creative and work with the NPC#3, and in general have addressed any issues they might have had.

Commissioner Simmons asked regarding the hours of operation; if the current store is open 6:00 a.m. to 12:00 p.m.; are any of the Family Fare stores they have developed open 24 hours.

Mr. Williams stated, yes some are, this store could be different as it depends on the use and public need. If the existing store felt they had the need for business to be open 24 hours, it would be open.

Commissioner Morris has concerns regarding the Felpausch Store building and the neighbors. Noted he owned Tuffy's nearby and does not have any interest in selling. Said he would like to see a site plan.

Mr. Williams stated they have looked at some different conceptual plans, but at this time the best they can do to address the neighbors concerns and focus on things like fence, plantings and buffers. He referred to the drawing he provided that show the large trees on Grand Blvd. and plan to continue to maintain them and keep as buffers.

Commissioner Morris asked if Anchor Properties would be interested in postponing for 30 days, so they can see more in writing regarding the fencing etc.

Mr. Glenn Perian stated this petition request for a rezoning should not be based on a site plan and does not require a site plan. It would be asking for more than what this body can ask in considering this request. Noted once it is rezoned, potentially any use that is permitted within the "C-2 General Business District" zoning would be allowed in this particular area that is currently zoned "O1", and

should not have any barring on this request before them today. Said there are safeguards written into the current zoning code to protect residential from commercial properties and if this rezone were to be approved or not whatever develops on that "C2" zoned or "O1" zoned property would need to meet or exceed those current standards in the code.

Commissioner Morris was not necessarily meaning the site plan but addressing the neighbors concerns.

Mr. Perian stated he understands their concerns and that Mr. Williams has answered some of them and his intentions for that site. If it is rezoned than it would be the responsibility of the next persons' obligation to meet or exceed those code standards for that site. It would be premature to ask Mr. Williams to provide a buffering or screening plan for this site at this particular time.

Mayor Behnke asked as Chair; he would like to see Mr. Williams respond to Mr. Morris question.

Mr. Williams stated he is very concerned with a 30-day delay and it is important they proceed with the process as one of their contracts is with the bankruptcy court for Ryan's property. Said they voluntarily agreed to provide screening on John R. St. and are willing to go beyond what is required by doubling the screening where it is not required and being flexible on the type of fencing installed.

Commissioner Morris stated he wanted to provide some answers for the neighbors, gas station owner and concerns for the children in the area. He feels it is a great addition to the city to have someone want to come in and invest in the city.

Commissioner Frantz stated it is not this body's purview to resolve landlord, tenant issues; but is asking for clarification regarding a statement of "they decided to relocate", who would they be.

Mr. Williams stated Spartan Stores decided to vacate and no longer lease the Felpausch stores.

Commissioner Frantz stated it looks like the neighbors have some long-term enforcement issues that are not tied to this project. She encourages the neighbors to seek resolution, and suggest they should follow-up and get those issues addressed.

Commissioner Barker asked Mr. Perian regarding the set-back that would be applicable between the current residents on John R. Street and the proposed use.

Mr. Perian stated in this situation the lot line that runs east and west, which is directly behind the residents along John R. Street there is a 7 ft. setback for buildings and a 50 ft. setback between the parking spaces and the residential structures.

Commissioner Barker asked Mr. Williams about the fencing and barrier they are proposing.

Mr. Williams stated they are required to do either fencing or plantings and they are willing to do both.

Commissioner Barker stated the problem issues that the neighbors have are present no matter what, but feels this is a good opportunity; with evergreen to add with fencing would make a good noise abatement and could be a win-win for both. Noted the approval of this petition is not contingent on a site plan and if it were denied, they may still proceed with this project.

Mr. Williams stated they have looked at this area and there are trees which are too large to move; if a berm were put in place you cannot plant on top of it as it would need a flat space and would need to start over with smaller trees; it could be an elimination of a good situation with the trees that are there now and can be improved by adding to what is there already. Said the new building will be moved away from the fence line where Ryan's is now and would be farther away from the residents with the down lighting. He showed a picture of the current pine trees; noted that with an addition of new plantings it would provide a good barrier.

Commissioner Barker said he was not proposing the trees be removed, they are good noise barriers. Said, he would like to spread the distance between the residences and the businesses. He feels the issue here is the zoning and no matter what is built the issues would be present regardless of what operation is put in place at that location.

Mayor Behnke asked if the old Felpausch Store would be demolished and turned into green space.

Mr. Williams stated the Spartan Stores do not own the property, that Felpausch owns the city block. He has development ideas that could be done to utilize that building such as commercial retail development. Felpausch would probably find a new tenant or redevelop that site just like the owners of Ryan's have done. Said they do not have any control over that redevelopment whatsoever.

Mayor Behnke said he feels they would be adding value to this area and it is a good investment of 7 million dollars in the Battle Creek area. Said he likes to see added value in the neighborhoods also and they have a neighborhood to be concerned about; that the developer needs to live up to what they say as he would not want to see the neighborhood deteriorated. He referenced a property on Beckley Road, who has not lived up to their berm and trees development. Asked how they will convince them that they will do as they say and hope that when this petition does go before the City Commission there will be a site plan, because they are more accountable to the people.

Mr. Williams stated he understands and the Spartan Stores have demonstrated in all the communities they operate that they are a good neighbor. As to the direct impact on this neighborhood, he is not sure there is a mechanism that will assure the city that they will put landscaping where they say, but he is open to discussion. Said the buffering of the commercial use with a fence and landscaping would help prevent noise etc., feels his plan would have a positive impact on the neighbors and would bring more detailed plans to the City Commission.

Mayor Behnke stated his concern is the neighbors and if they approved today he encourage them to work with the neighbors and have a site plan agreed upon and brought to the City Commission to approve as to ensure that the neighbors are going to stay in our community.

Commissioner Simmons asked if the plans regarding Long John Silvers are not resolved, how can a site plan be completed. Mr. Williams stated they are in negotiations and if they choose to stay; their plan would not be as they wished, but would still work in several different ways.

Commissioner Simmons stated in regards to the Urbandale development; in an assurance to the Mayor the property owners are very happy with Anchor Properties as they have bent over backwards for the residents left there and have lived up to all their promises thus far and have reached a consensus.

MOTION WAS MADE BY COMMISSIONER FRANTZ, TO APPROVE THE REZONING OF 150 GRAND BLVD. (PARCEL #7610-15-141-0 AND N.E. PORTION OF PARCEL #7610-15-132-0) FROM "O-1 OFFICE DISTRICT" TO "C-2 GENERAL BUSINESS DISTRICT"; SUPPORTED BY COMMISSIONER BARKER.

Discussion:

Commissioner Barker noted he was supporting this motion reluctantly as buffer between John R. Street and proposed development is essential as he feels it is a Transitional Business District somewhat.

Commissioner Simmons echo Commissioner Frantz regarding concerns; it seems they have had traffic concerns for a long-time and he intends to immediate those issue or concerns. Said those issues are apart from today's petition for rezoning request.

Commissioner Stetler said this buffer when completed will have the same zoning on both sides, which one side will have a store and the other could have an Ice-cream shop possibly and would be buffering

the same zoning. There is nothing to guarantee that the use of the properties on John R. Street will remain the same.

Commissioner Hicks stated the reclassification request is straight forward. The Commissioners create a false sense of authority when they get outside of their area of purview. He hopes in the future they confine their comments and exchange for only what they are responsible.

Mayor Behnke stated as an elected official they need to take in consideration the concerns of their constituents. He understands their responsibilities they have to the Planning Commission, but is more concerned as an elected official in losing neighborhoods. When you have a business entity that puts their economic decision into a neighborhood, it is a concern. It is difficult when buffers, tree lines and fence lines are not established for enforcement for developers, if a site plan is not reviewed by this body regarding those items, you cannot hold them to an agreement. He understands their responsibilities, but also understands the responsibilities and power that come from the people to the elected officials.

Commissioner Morris stated he respected the Mayors opinion.

A VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED.

9. Comments by the Public: None

10. Comments by the Staff and Commission Members:

Mr. Glenn Perian noted regarding code requirement for Accessory Buildings were include in today's meeting packet and in the very near future bring that discussion back to the Planning Commission to get feedback; it would be on the next meeting agenda for discussion.

11. Adjournment:

The meeting adjourned at 5:14 P.M.

Respectfully Submitted,
Leona Parrish, Administrative Assistant
Battle Creek City Planning Commission